

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 FAIZA ABU,

10 Plaintiff,

11 v.

12 PIRAMCO SEA-TAC INC., d/b/a BEST
13 WESTERN AIRPORT EXECUTEL,

14 Defendant,

Case No. C08-1167RSL

ORDER GRANTING IN PART AND
DENYING IN PART MOTION
FOR A PROTECTIVE ORDER

15 This matter comes before the Court on plaintiff's motion for a protective order.
16 Plaintiff seeks an order preventing defendant from contacting her current and former
17 employers, prohibiting defendant from issuing subpoenas to them, and quashing the
18 subpoenas already issued.

19 **A. Background Facts.**

20 Plaintiff worked for defendant as a hotel front desk agent from July 27, 2006 until
21 November 3, 2006. Plaintiff was required to wear a uniform at work.

22 A tenet of plaintiff's Muslim faith is to wear a head scarf when she is in the
23 presence of males who are not her husband or blood relatives. Plaintiff wore a head scarf
24 to work during Ramadan in 2006 and the weeks prior to it. Plaintiff contends that

1 defendant discharged her when she refused to remove her head scarf. Plaintiff contends
2 that defendant failed to accommodate her religious preference in violation of Title VII of
3 the Civil Rights Act of 1964 (“Title VII”).

4 In January 2009, defendant issued subpoenas duces tecum to two employers for
5 whom plaintiff worked prior to defendant.¹ Defendant expressed an intent to issue three
6 more subpoenas to plaintiff’s subsequent employers, including her current employer. The
7 subpoenas to the former employers are identical and request ten categories of documents
8 regarding plaintiff: (1) each personnel file, (2) each departmental file, (3) each formal or
9 informal supervisor’s file, (4) all records relating to any reference check completed, (5)
10 all payroll records, (6) all records identifying employee benefits, (7) each record relating
11 to the reason for termination, (8) all records relating to complaints about plaintiff’s work
12 performance and investigation into such complaints, (9) records reflecting complaints of
13 discrimination made by plaintiff to any agency, and (10) a job description.

14 **B. Analysis.**

15 Plaintiff has filed a certification establishing that counsel met and conferred prior
16 to filing this motion.² Although plaintiff initially contended that defendant failed to give
17 proper notice of the subpoenas, she did not pursue that issue in her reply memorandum.
18 Moreover, plaintiff has had a sufficient opportunity, albeit after two of the subpoenas
19

20 ¹ In December 2008, defendant sent subpoenas duces tecum to the University of
21 Washington and Highline Community College seeking copies of plaintiff’s education-
22 related files, including her financial aid records. Plaintiff has not moved to quash those
subpoenas and instead focuses on the employment-related subpoenas.

23 ² On January 15, 2009, plaintiff’s counsel sent a letter to this Court setting forth the
24 issue and requesting “direction.” Even though a copy of the letter was sent to opposing
25 counsel, the communication was inappropriate. Any request for relief should be
contained in a motion, which allows the opposing party an opportunity to respond.

1 were served, to object. Therefore, the motion is ready for the Court's review.

2 As a threshold matter, a plaintiff has standing to seek to quash a subpoena issued
3 to a third party where the plaintiff asserts a legitimate privacy interest in the material
4 sought. See, e.g., Maxwell v. Health Ctr. of Lake City, 2006 WL 1627020 (M.D. Fla.
5 2006). In this case, plaintiff has shown that she has a legitimate privacy interest in the
6 contents of her employment-related files. Therefore, she has standing to bring this
7 motion.

8 As for the merits of plaintiff's motion, the Court has discretion to issue a
9 protective order forbidding or limiting discovery. Fed. R. Civ. P. 26(c)(1). A party is
10 entitled to discovery into matters "reasonably calculated to lead to the discovery of
11 admissible evidence." Fed. R. Civ. P. 26(b)(1). A party's right to obtain material
12 pursuant to a Rule 45 subpoena to a third party is as broad as otherwise permitted under
13 the discovery rules. See, e.g., Wright, Miller & Cooper, Federal Practice & Procedure §
14 2459 at pp. 44-45 (2d. ed. 1994). A court may limit discovery to protect a party from
15 annoyance, embarrassment, oppression, or undue burden. Fed. R. Civ. P. 26(c)(1).
16 Plaintiff, as the party resisting discovery, bears the burden of showing why discovery
17 should be denied. See, e.g., Blankenship v. Hearst Corp., 519 F.2d 418, 419 (9th Cir.
18 1975).

19 Plaintiff contends that the information defendant seeks is information it already
20 has (information about her compensation) or information that is inadmissible in this case
21 (information regarding plaintiff's performance history). The requests are not overly
22 broad on their face because they request specific categories of documents. However,
23 defendant has not explained why information regarding plaintiff's employee benefits is
24 relevant. Although plaintiff seeks back pay, she does not seek lost benefits. Therefore,

1 the other employers will not be required to provide information about plaintiff's benefits.
2 Similarly, the other employers will not be required to provide plaintiff's payroll records
3 because compensation information can be obtained through less intrusive means, like tax
4 records.³ Nor is this information relevant to mitigation or to support defendant's after
5 acquired evidence defense. Any after acquired evidence that might be obtained would not
6 affect plaintiff's damages because she has already obtained other employment and
7 mitigated her damages.

8 Defendant has shown that the other information sought from plaintiff's employers
9 is relevant in two ways. First, it is relevant to her claims of emotional distress. Plaintiff
10 contends that as a result of defendant's discriminatory treatment, she suffered emotional
11 distress, including a reduced ability to concentrate. Consequently, plaintiff's subsequent
12 attendance and ability to concentrate (as reflected in her job performance) is relevant.
13 Furthermore, the information is also relevant to support or disprove causation of the
14 emotional distress. Second, information from plaintiff's other employers is relevant to
15 her credibility. It does not appear that defendant is conducting a fishing expedition on the
16 issue. Rather, plaintiff has been untruthful once about an important issue. She failed to
17 list a recent prior employer on her employment application with defendant because she
18 feared receiving a bad reference. The omission was made even though plaintiff signed
19 the application certifying that the answers provided were accurate to the best of her
20 knowledge and belief and acknowledging that intentional omissions could lead to her

22 ³ Defendant argues that plaintiff has indicated in her supplemental initial
23 disclosures that she will rely on documents from other employers. Defendant did not
24 attach the supplemental initial disclosures or otherwise indicate the extent of plaintiff's
25 anticipated reliance. If plaintiff indicates an intent to rely on payroll and benefits-related
documents from her other employers, defendant may seek to obtain those documents.

1 termination. Because plaintiff was intentionally untruthful at least once regarding an
2 important issue, defendant is entitled to further probe her credibility.⁴ Moreover, the
3 nature of plaintiff's claims and the issue of the sincerity of her beliefs place her credibility
4 directly at issue in this case. Furthermore, defendant is entitled to discover whether
5 plaintiff has previously filed frivolous discrimination claims, which could weigh against
6 her credibility. See, e.g., Maxwell, 2006 WL 1627020 at *4 (citing Graham v. Casey's
7 General Stores, 206 F.R.D. 251, 256 (S.D. Ind. 2002)).⁵ Therefore, with the exception of
8 documents regarding payroll and benefits, the information sought is relevant. Plaintiff
9 has not shown how the evidence can be obtained through less intrusive means.

10 Having found that some of the requested evidence is relevant, the Court balances
11 defendant's interest in obtaining the information against plaintiff's privacy interest and
12 the burden to the third parties. Plaintiff claims that she does not want her current
13 employer to learn that she has filed an employment discrimination lawsuit against her
14 prior employer. However, plaintiff is statutorily protected from retaliation for filing the
15 lawsuit. As for her claimed privacy interest, plaintiff gave a press interview about this
16 matter which resulted in a story about it in the Seattle Weekly in September 2008.
17 Coverage of the issue is readily available through a simple internet search using
18

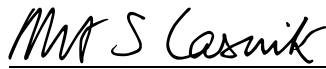
19 ⁴ Compare Graham, 206 F.R.D. at 255 (explaining that plaintiff's untruthful
20 statements to her prior employer could be relevant to her credibility) with Chamberlain v.
21 Farmington Sav. Bank, 2007 WL 2786421 (D. Conn. 2007) (granting motion to quash
22 where defendant had not shown that plaintiff had misrepresented information in the
23 litigation); see also Woods v. Fresenius Med. Care Group, 2008 WL 151836 (S.D. Ind.
2008) (declining to find relevance based on credibility where defendant did not identify
facts to show that plaintiff had been untruthful to it or to her other employers).

24 ⁵ See also Shirazi v. Childtime Learning Ctr., 2008 WL 4792694 (W.D. Okla.
25 2008).

1 plaintiff's name. Moreover, plaintiff may have waived some of her privacy interests by
2 bringing this Title VII suit and seeking damages for emotional distress. See, e.g.,
3 Maxwell, 2006 WL 1627020 at *2; Mirkin v. Winston Resources, LLC, 2008 WL
4 4861840 (S.D.N.Y. 2008). Plaintiff could have reasonably expected that matters
5 regarding her other employment and performance would be disclosed in this litigation.
6 She has not shown that any information in her employment records is particularly
7 embarrassing or revealing. There is no evidence that defendant intends to use the
8 discovery process or the contents of the files to harass plaintiff or her other employers. In
9 addition, plaintiff has worked for each employer for a relatively short period of time, so
10 producing the documents should not be unduly burdensome.

11 Accordingly, plaintiff's motion for a protective order (Dkt. #23) is GRANTED IN
12 PART AND DENIED IN PART. The Court quashes the already issued subpoenas to the
13 extent that they seek plaintiff's payroll records and information regarding employee
14 benefits. Nor may defendant seek that information from plaintiff's subsequent employers.
15 Otherwise, plaintiff's motion is denied.

16
17 DATED this 5th day of February, 2009.
18

19
20 
21 Robert S. Lasnik
22 United States District Judge
23
24
25